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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 NORTHERN CALIFORNIA RIVER
WATCH, a non-profit Corporation,

12 Plaintiff,

13 v.

14 SONOMA COUNTY WATER AGENCY,
15 DOES 1-10, Inclusive,

16 Defendants.
17
18

CASE NO.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**

(Environmental - Clean Water Act
33 U.S.C. §1251 et seq.)

19 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
20 "RIVER WATCH") by and through its attorneys, and for its complaint against defendants,
21 SONOMA COUNTY WATER AGENCY and DOES 1-10 , Inclusive, (hereafter, "SCWA"),
22 states as follows:

23 **I. NATURE OF THE CASE**

24 1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water
25 Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C.
26 §1251 et seq., specifically CWA § 505, 33 U.S.C. §1365, 33 U.S.C. § 1311, 33 U.S.C. § 1342,
27 to stop SCWA from repeated and ongoing violations of the CWA. These violations are detailed
28

1 in the Notice of Violations and Intent to File Suit made part of the pleadings of this case and
2 attached hereto as EXHIBIT A (hereafter, "NOTICE").

3 2. SCWA is routinely violating the terms of its National Pollution Discharge Elimination
4 System ("NPDES") Permits (hereafter, "PERMITS"), adopted by the Regional Water Quality
5 Control Board, North Coast Bay Region (hereafter, "RWQCB"), regulating the Sonoma Valley
6 Wastewater Collection and Treatment Facility. SCWA is also routinely violating the Water
7 Quality Control Plan for the North Coast Region (hereafter, "Basin Plan"), toxics standards
8 promulgated by the State Water Resources Control Board (hereafter, "SWRCB"), and
9 Environmental Protection Agency (hereafter, "EPA") regulations codified in the Code of
10 Federal Regulations in the course of SCWA's operation of the facilities referenced in this
11 complaint and in the NOTICE.

12 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
13 the imposition of civil penalties, and other relief for SCWA's violations of the terms of its
14 PERMITS.

15 4. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to
16 public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent
17 part:

18 *Public participation in the development, revision, and enforcement of any*
19 *regulation, standard, effluent limitation, plan or program established by*
20 *the Administrator or any State under this chapter shall be provided for,*
encouraged, and assisted by the Administrator and the States.

21 5. SCWA illegally discharges to waters which are habitat for threatened or endangered
22 species as that term is defined by the California EPA and the United States EPA.

23 II. PARTIES

24 6. RIVER WATCH, plaintiff NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3)
25 non-profit public benefit corporation duly organized under the laws of the State of California,
26 with headquarters and main office located at 6741 Sebastopol Avenue, Suite 140, Sebastopol,
27 California. RIVER WATCH is dedicated to protect, enhance and help restore the surface and
28 subsurface waters of Northern California. RIVER WATCH's members live in Northern

1 California including Sonoma County where the facilities referenced herein under SCWA's
2 operation and/or control are located.

3 7. RIVER WATCH's members live nearby to waters affected by SCWA's illegal
4 discharges. RIVER WATCH's members have interests which are or may be adversely affected
5 by SCWA's violations. Said members use the effected waters and effected watershed areas for
6 domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks,
7 religious, spiritual and shamanic practices, and the like. Furthermore, the relief sought will
8 redress the injury in fact, likelihood of future injury and interference with the interests of said
9 members.

10 8. SCWA, defendant SONOMA COUNTY WATER AGENCY is a governmental entity.
11 Its administrative offices are located at 404 Aviation Boulevard, Santa Rosa, California 95403.

12 9. SCWA, defendants DOES 1 - 10, Inclusive, respectively, are persons, partnerships,
13 corporations and entities, who are, or were, responsible for, or in some way contributed to, the
14 violations which are the subject of this Complaint or are, or were, responsible for the
15 maintenance, supervision, management, operations, or insurance coverage of SCWA's facilities
16 and operations. The names, identities, capacities, and functions of DOES 1 - 10, Inclusive are
17 presently unknown to RIVER WATCH. RIVER WATCH shall seek leave of court to amend
18 this Complaint to insert the true names of said DOES Defendants when the same have been
19 ascertained.

20 III. JURISDICTIONAL ALLEGATIONS

21 10. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C.
22 § 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own
23 behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or
24 limitation . . . or (B) an order issued by the Administrator or a State with respect to such a
25 standard or limitation." For purposes of CWA § 505, "the term 'citizen' means a person or
26 persons having an interest which is or may be adversely affected."

27 11. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
28 from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit

1 from the waterways and associated natural resources into which the SCWA discharges
2 wastewater, or by which its operations adversely affect members' interests, in violation of
3 SCWA's PERMITS and CWA § 301(a), 33 U.S.C. § 1311(a). The health, economic,
4 recreational, aesthetic and environmental interests of RIVER WATCH and its members may be,
5 have been, are being, and will continue to be adversely affected by SCWA's unlawful
6 violations. RIVER WATCH contends there exists an injury in fact to its members, causation
7 of that injury by SCWA's complained of conduct, and a likelihood that the requested relief will
8 redress that injury.

9 12. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), RIVER WATCH gave
10 notice of the violations alleged in this Complaint more than sixty (60) days prior to
11 commencement of this lawsuit, to: (a) SCWA, (b) the United States Environmental Protection
12 Agency, Federal and Regional, and (c) the State of California Water Resources Control Board.

13 13. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this complaint has been
14 served on the United States Attorney General and the Administrator of the Federal EPA.

15 14. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the
16 treatment facilities under SCWA's operation and/or control, and the sites where illegal
17 discharges occurred, which are the source of the violations complained of in this action, are
18 located within this District.

19 IV. GENERAL ALLEGATIONS

20 15. RIVER WATCH incorporates by reference all the foregoing including the NOTICE
21 attached to this complaint as EXHIBIT A and incorporated by reference herein and refers
22 specifically to Section G with respect to the Sonoma Valley County Sanitation District.

23 16. SCWA owns and/or operates a wastewater treatment plant, reuse and disposal facility
24 (hereafter, "FACILITY") located at 22675 Eighth Street East in the City of Sonoma, Sonoma
25 County. The Facility provides secondary treatment for combined domestic, commercial and
26 industrial wastewater collected in the City of Sonoma and surrounding unincorporated areas
27 identified in the NOTICE. The FACILITY discharges both directly and indirectly into the
28 waterways referenced below.

1 17. All illegal discharges and activities complained of in this Complaint occur in the
2 waterways named in the NOTICE, all of which are waters of the United States.

3 18. The RWQCB has determined that the watershed areas and affected waterways are
4 beneficially used for drinking water, water contact recreation, non-contact water recreation,
5 fresh water habitat, wildlife habitat, preservation of rare and endangered species, fish migration,
6 fish spawning, industrial service supply, navigation, and sport fishing.

7 19. Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the EPA and the State of California
8 have formally concluded that discharges by SCWA of the type complained of in the NOTICE
9 are prohibited by law. Beneficial uses of most portions of the specified waterways are being
10 affected in a prohibited manner by the illegal discharges and activities of SCWA. Additionally,
11 pursuant to CWA § 304, 33 U.S.C. § 1311, the EPA and the State of California have identified
12 the FACILITY owned and/or operated by SCWA, as a point source, the discharges from which
13 contribute to violations of applicable water quality standards.

14 **V. STATUTORY AND REGULATORY BACKGROUND**

15 20. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point
16 source" into the navigable waters of the United States, unless such discharge is in compliance
17 with applicable effluent limitations as set by the EPA and the applicable State agency. These
18 limits are to be incorporated into an NPDES permit for that point source specifically. Additional
19 sets of regulations are set forth in the Basin Plan, California Toxics Plan, the Code of Federal
20 Regulation and other regulations promulgated by the EPA and the SWRCB. CWA § 301(a),
21 prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent
22 standard or limitation or an order issued by the EPA or a State with respect to such a standard
23 or limitation including an NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.
24 The FACILITY is a point source under the CWA.

25 21. The affected waterways detailed in this Complaint and in the NOTICE are navigable
26 waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7)

27 22. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits,
28 subject to specified conditions and requirements, pursuant to CWA § 402, 33 U.S.C. § 1342.

1 23. The RWQCB adopted NPDES PERMITS for the FACILITY, prescribing effluent
2 limitations and other conditions of compliance for the FACILITY. The PERMIT numbers are
3 identified in the NOTICE. These PERMITS authorize SCWA to discharge limited quantities
4 of wastewater and pollutants into the aforementioned waterways and require SCWA to comply
5 with various reporting and monitoring requirements.

6 24. The PERMITS also prescribe conditions to ensure compliance with the CWA. They
7 require SCWA to establish and maintain records, to install, use and maintain monitoring
8 equipment, to regularly monitor and sample pollutants in its discharges, and to report to the
9 RWQCB in specified ways on a regular basis regarding discharge of pollutants from the
10 FACILITY. The reports include mandatory monthly Self Monitoring Reports. All conditions
11 of the PERMITS are enforceable in a citizens' suit.

12 VI. SCWA'S VIOLATIONS

13 25. SCWA's discharges from the FACILITY regulated by NPDES PERMITS violated its
14 PERMITS on numerous occasions and those violations are continuing. The violations are
15 established in SCWA's monitoring data or lack of monitoring and reporting which are necessary
16 for SCWA to prove compliance with its PERMITS, and in Self Monitoring Reports as well as
17 data sent to the RWQCB by SCWA.

18 26. The enumerated violations are detailed in the NOTICE, incorporated herein by reference,
19 and below.

20 27. The types of violations are described with particularity by using the designations as set
21 forth in SCWA's PERMITS and detailed in the NOTICE using the same designations as in the
22 PERMITS.

23 28. The location of the discharges are the discharge points as described in the NOTICE and
24 incorporated herein by reference.

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VII. CLAIM FOR RELIEF

**Violation of CWA - 33 U.S.C. § 1251 et seq., 33 U.S.C. § 1342, 33 U.S.C. § 1311
Discharger Must Comply with NPDES Permit**

29. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 28 as though fully set forth herein including all allegations in the NOTICE incorporated herein by reference.

30. SCWA has violated and continues to violate the CWA as evidenced by the violations of the terms of its PERMITS as well as applicable State and Federal standards. By law and by the terms of SCWA's PERMITS, which SCWA has not objected to, violations of SCWA's PERMITS are violations of the CWA. (See 40 C.F.R. § 122.41(a)).

31. SCWA's violations are ongoing, and will continue after the filing of this Complaint. RIVER WATCH alleges all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by SCWA to the RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will file additional amended complaints if necessary to address State and Federal violations of SCWA's PERMITS which may occur after the filing of this Complaint. Each of SCWA's violations in excess of its PERMITS limits or State and Federal standards has been and is a separate violation of the CWA. SCWA has violated and continues to violate an "effluent standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1) or an order issued by the State with respect to such a standard or limitation.

32. RIVER WATCH avers and believes and on such belief alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, SCWA will continue to violate its PERMITS limits as well as State and Federal standards with respect to the enumerated discharges and releases. RIVER WATCH avers and believes and on such belief alleges that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect the interests of its members which are or may be adversely affected by SCWA's violations of its PERMITS, and State and Federal standards.

1 **VIII. RELIEF REQUESTED**

2 WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

3 33. Declare SCWA to have violated and to be in violation of the CWA;

4 34. Issue an injunction ordering SCWA to immediately operate its FACILITY in compliance
5 with the CWA and applicable effluent and receiving water limitations in its PERMITS, as well
6 as State and Federal standards;

7 35. Order SCWA to pay civil penalties on a per violation per day basis:

8 36. Order SCWA to pay RIVER WATCH's reasonable attorneys' fees and costs (including
9 expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,

10 37. Grant such other and further relief as may be just and proper.

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13 DATED: September 15, 2005

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JERRY BERNHAUT
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

September 7, 2004

Certified Mail - Return Receipt Requested

Randy D. Poole, General Manager
Sonoma County Water Agency
2150 West College Avenue
Santa Rosa, CA 95407

Steven A. Woodside, County Counsel
County of Sonoma
575 Administration Dr. Room 105-A
Santa Rosa, CA 95403

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Poole and Mr. Woodside:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA") requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. § 1365(a), §505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur and the registered agent of the alleged violator.

Northern California River Watch ("River Watch") hereby places the Sonoma County Water Agency ("SCWA") and the County of Sonoma on notice that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit in Federal District Court against the SCWA for its continuing violations of an effluent standard or limitation, "permit condition or requirement and/or an order issued by the Administrator or a State with respect to such standard or limitation" under § 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the

Notice of Violations and Intent to File Suit - CWA

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Basin Plan, as exemplified by of violations of effluent limits in its NPDES permits at the various facilities listed below.

I. INTRODUCTION

The Clean Water Act regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to the NPDES, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a). Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a), 33 U.S.C. § 1365(f)(1).

The Clean Water Act provides that, in any given state or region, authority to administer the NPDES permitting system can be delegated by the federal Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus, comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this case is the Regional Water Quality Control Board ("RWQCB").

The main office of the SCWA is located at 2150 West College Avenue, Santa Rosa, California. The Sonoma County Board of Supervisors sits as the Board of Directors of the SCWA and has final responsibility for SCWA policies and operations, and is therefore also being identified in this NOTICE as an operator and or owner as those terms are used the Clean Water Act. The SCWA owns and/or operates numerous wastewater treatment plants throughout Sonoma County. The SCWA is also responsible for compliance with regulations governing storm water discharges at several facilities. Upon reviewing operations at facilities under the jurisdiction of the SCWA, general patterns emerge of failure to adequately perform legally mandated monitoring and failure to take adequate measures to avoid violating effluent discharge standards or limitations. Below is an enumeration of violations at specific facilities for which the SCWA is legally responsible. These enumerated violations are based upon review of RWQCB files and SCWA files.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified the NPDES Permit of each facility with specificity. It has also used the actual language of the Permit to describe the various violations.

2. *The activity alleged to constitute a violation.*

To comply with this requirement River Watch has set forth narratives below, describing with particularity the activities leading to violations.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are the SCWA and those of its employees responsible for compliance with the Permit regulating each named Facility.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in each facility's Permit and also in records either created or maintained by or for the SCWA which relate to the facilities identified below and related activities.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB and SCWA records for the period from September 7, 1999 through September 7, 2004. Therefore, the range of dates covered by this NOTICE is from September 7, 1999 through September 7, 2004. River Watch will from time to time update this NOTICE to include all violations which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day is a violation.

II. FACILITIES

A. Russian River County Sanitation District

The Russian River County Sanitation District ("RRCSD"), owns a municipal wastewater treatment facility located southeast of Vacation Beach and north of the Russian River on Neely Road. The SCWA is under contract to operate and maintain the Russian River Wastewater Treatment Facility ("Russian River Facility"). The Russian River Facility serves the communities of Armstrong Park, Drakes Road Area, Guerneville, Guerneville Park, Rio Nido and Vacation Beach. Treated effluent is disposed of by irrigation and discharge to the Russian River during the discharge season (October 1 through May 14). Waste Discharge Requirements Order No. 92-51, which also served as the Russian River Facility's NPDES

Permit No. CA0024058, was adopted on May 28, 1992. The Russian River Facility's current Permit, Waste Discharge Requirements Order No. R1-2003-0026, which also served as the Russian River Facility's NPDES Permit No. CA0024058, was adopted on November 5, 2003. The Order allows the RRCSD to discharge up to one percent of the flow of the receiving water from October 1 through May 14 each year.

The Russian River Facility has a history of serious collection system inflow and infiltration causing unauthorized bypasses and releases of partially treated wastewater into the Russian River. Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the State of California has formally concluded that violations by RRCSD of its NPDES Permit are prohibited by law. Beneficial uses of the Russian River and its tributaries in the vicinity of the Russian River Facility are being effected in a prohibited manner by these violations. Pursuant to CWA § 304, 33 U.S.C. § 1311, the EPA and the State of California have identified the Russian River Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

From September 7, 1999 through September 7, 2004, the RRCSD and the SCWA have violated the requirements of the Russian River Facility's NPDES Permit, the Basin Plan and the Code of Federal regulations as those requirements are referenced in its Permit for discharge limitations, effluent limitations, and receiving water limitations. Said violations are evidenced and reported by the RRCSD in its monthly self monitoring reports ("SMRs") or daily monitoring reports ("DMRs"), its own testing data compiled in compliance with its Permit or other orders of the RWQCB, other documentation filed with the RWQCB or in its possession, and, as evidenced by unpermitted discharges due to failures in the collection system. Furthermore these violations are continuing. The violations, established in its SMRs, raw data and records of the RWQCB, include the following categories in the Permit:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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- | | |
|-------------|--|
| 1825 | Collection system overflows, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in the SCWA's West County Sewage Stoppage reports, such as those submitted for February 8, 2003, November 22, 2001, and June 16, 2002. Underground discharges are alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in SMRs. Additional evidence of underground discharges is discoverable through a video inspection of the collection system and testing of waterways adjacent to sewer lines for nutrients, pathogens and other constituents indicative of sewage contamination, such as |
|-------------|--|

caffeine. (Order No. 92-51 A.1, A.5, Order No. R1-2003-0026, A.1, A.4,A.5)

18 Leaks from broken irrigation lines. (Order No. 92-51 A.1, A.3, Order No. R1-2003-0026 A.1, A.5)

15 Irrigation excessive of vegetative capacity. (Order No. 92-51 A.1, A.3, Order No. R1-2003-0026 A.1, A.5)

92-51 A.1: The discharge of waste to land that is not under the control of the permittee is prohibited, except as authorized under D. Solids Disposal.

92-51 A.3: Creation of a pollution, contamination or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 5411]

92-51 A.5: The discharge of untreated waste from anywhere within the collection, treatment or disposal facility is prohibited.

R1-2003-0026 A.1:

The discharge of any waste not disclosed by the Permittee and of any waste disclosed by the Permittee but not reasonably anticipated to occur is prohibited.

R1-2003-0026 A.4:

The discharge of untreated or partially treated waste from anywhere within the collection, treatment or disposal facility is prohibited.

R1-2003-0026 A.5:

The discharge of waste to land that is not owned by or under agreement to use by the Permittee is prohibited.

Effluent Limits

<u>Violations</u>	<u>Description</u>
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10	Bypass of treatment process. (Order 92-51 B., Order No. R1-2003-0026 B)
20	Limit on turbidity. (Order No. 92-51 B.1)
10	Limit on BOD. (Order No. 92-51 B.1, B.2, Order No. R1-2003-0026 B.1)
10	Limit on total suspended solids. (Order No. 92-51 B.1, B.2, Order No. R1-2003-0026 B.1)
10	Limit on total coliform. (Order No.92-51 B.1, B.2, Order No. R1-2003-0026 B.2)

92-51 B.1: Only advanced treated wastewater, as defined by the numerical limitations below, shall be discharged from the wastewater treatment plant to the Russian River (Discharge Serial No. 001). The advanced treated wastewater shall be adequately disinfected, oxidized, coagulated, clarified and filtered (or equivalent), as determined by the State Department of Health Services. Advanced treated wastewater shall not contain constituents in excess of the following limits: (See Order 92-51 p4 for numerical limits)

R1-2003-0026 B:

Only advanced treated wastewater, as defined by the WWTF's treatment design and the numerical limitations below, shall be discharged from the WWTF to the Russian River. The advanced treated wastewater shall be screened and degritted, adequately oxidized, clarified, and filtered, disinfected and dechlorinated. Representative samples of advanced treated effluent shall be collected at a point between the end of the treatment train and the storage pond and shall be analyzed for the purpose of determining compliance with this Order, unless otherwise specified.

R1-2003-0026 B.1:

Advanced treated wastewater shall not contain constituents in excess of the following limitations: (See Order R1-2003-0026, p12 for numerical limits)

R1-2003-0026 B.2:

The disinfected effluent discharged from the WWTF to the Russian River shall not contain concentrations of total coliform bacteria exceeding the following limitations: (See Order R1-2003-0026, p13 for numerical limits)

Receiving Water Limitations

<u>Violations</u>	<u>Description</u>
38	Limit on pH. In addition to the violations listed by the SCWA, River Watch also alleges that 50% of all 6.5 pH are actually below 6.5 due to instrument reading in three significant numbers but rounding up. (Order No. 92-51 C.2, Order No. R1-2003-0026 D.2)
20	Limit on turbidity. (Order No. R1-2003-0026 D.3)

92-51 C.2: The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally.

R1-2003-0026 D.2 :

The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally. If the pH of the receiving water is less than 6.5, the discharge shall not cause a further depression of the pH of the receiving water. If the pH of the receiving water is greater than 8.5, the discharge shall not cause a further increase in the pH of the receiving water.

R1-2003-0026 D.3:

The discharge shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.

Monitoring Requirements

110 Failure to report or adequately describe violations. (Order No. 92-51 E.10.a, Order No. R1-2003-0026 K.8, K.10.a)

92-51 E.10.a: Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

R1-2003-0026 K.8:

The Permittees shall furnish the Regional Water Board, State Water Board, or U.S. EPA, within a reasonable time, any information that the Regional Water Board, State Water Board, or U.S. EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. The Permittees shall also furnish to the Regional Water Board, upon request, copies of records required to be kept by this Order [40 CFR 122.4(h)].

R1-2003-0026 K.10.a:

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

Some of the above violations are documented in Order No. 99-69 for Administrative Civil Liability.

B. Occidental County Sanitation District

The Occidental County Sanitation District ("OCS D") owns a municipal wastewater treatment facility ("Occidental Facility") located east of the town of Occidental. The SCWA is under contract to

operate and maintain the Occidental Facility. The RWQCB adopted WDR Order No. 93-42 for the Occidental Facility on May 27, 1993. This Order also serves as the NPDES permit for the Occidental Facility. The Occidental Facility discharges secondarily treated domestic wastewater to Graham's Pond, a reservoir constructed in a tributary to Dutch Bill Creek. Order 93-42 allows discharges from Graham's Pond to Dutch Bill Creek up to one percent of the flow of the receiving water, during the discharge season from October 1st through May 15th. During the non-discharge season, from May 15th through September 30th, the SCWA irrigates adjacent pastureland with treated effluent from Graham's Pond. The OCSD and the Camp Meeker Recreation and Parks District have developed plans for a Capital Improvement Project to address ongoing violations of WDR Order No. 93-42. The two districts also plan to take over full ownership and operational responsibility of the Occidental Facility.

The Occidental Facility has a history of discharge violations due to a lack of storage capacity and/or inadequate operation of storage facilities. There are also ongoing effluent limit violations due to inadequate pollution source reduction and wastewater treatment, as well as failures to adequately report violations. Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by the SCWA of the Occidental Facility's NPDES Permit are prohibited by law. Beneficial uses of Dutch Bill Creek and its tributaries in the vicinity of the Occidental Facility are being effected in a prohibited manner by these violations. Pursuant to CWA § 304, 33 U.S.C. § 1311, the EPA and the State of California have identified the Occidental Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

Said violations are evidenced and reported by the OCSD in its monthly SMRs or DMRs, its own testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. Furthermore these violations are continuing.

From September 7, 1999 through September 7, 2004, the OCSD and the SCWA have continued to violate the requirements of the Occidental Facility's NPDES Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Occidental Facility's Permit for discharge limitations, effluent limitations and receiving water limitations. The violations, established in the OCSD's SMRs, raw data and records of the RWQCB, include but are not limited to the following categories in the Permit:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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- | | |
|-----------|---|
| 30 | Discharging to Dutch Bill Creek at a rate exceeding the permitted limit of one percent of the creek flow, on two occasions grossly exceeding the permitted rate by 236 % on 2/14/00 and by 80% on 11/29/01. (Order No. 93-42 A.6) |
| 25 | Excessive irrigation, exceeding vegetative capacity. (Order No. 93-42 A.2, A.5) |

1825 Collection system overflows, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in the SCWA's West County Sewage Stoppage Reports, such as those submitted for February 11, 2003, November 25, 2001 and July 14, 2002. Underground discharges are alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in the OCSD's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in its SMRs. (Order No. 93-42 A.2, A.4)

A.2: Creation of a pollution, contamination or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 5411]

A.4: The discharge of untreated treated waste from anywhere within the collection, treatment or disposal facility is prohibited.

A.5: The discharge of waste from the Occidental County Sanitation District Wastewater Treatment Plant to Dutch Bill Creek or its tributaries during the period from May 15 through September 30 each year is prohibited.

A.6: During the period of October 1 through May 14, discharges of wastewater shall not exceed one percent of the flow of the receiving. For purposes of this permit, the flow in Dutch Bill Creek shall be that flow measured at Camp Meeker.

Receiving Water Prohibitions

<u>Violations</u>	<u>Description</u>
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33	Difference between pH levels in Dutch Bill Creek upstream and downstream of discharge point exceeded permitted limit of 0.5. (Order No. 93-42 C.2)
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25	Difference in turbidity of Dutch Bill Creek upstream and downstream of discharge point exceeded the permitted limit of 20%. (Order No. 93-42 C.3)
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C.2: The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally.

C.3: The discharge shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.

Effluent Limits

<u>Violations</u>	<u>Description</u>
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30	Maximum limit on Chlorine Residual. (Order No. 93-42 B.1, B.2)
42	Maximum limit on Biological Oxygen Demand. (Order No. 93-42 B.1, B.2)
22	Maximum limit on Total Suspended Solids. (Order No. 93-42 B.1, B.2)
12	Maximum limit on Total Coliform. (Order No. 93-42 B.1, B.2)
7	Maximum limit on pH. (Order No. 93-42 C.2, Receiving Water Limitations)

B.1: Wastes discharged to Graham's Pond prior to the time the average annual dry weather flow equals or exceeds 0.034 mgd shall not contain constituents in excess of the following limits: (See Order No. 93-42, p4 for numerical limits)

B.2: After the average annual dry weather flow equals or exceeds 0.034, only advanced treated wastewater as defined by the numerical limitations listed below shall be discharged to Graham's Pond. The advanced treated wastewater shall be adequately disinfected, oxidized, coagulated, clarified and filtered (or equivalent), as determined by the State Department of Health Services. Wastes discharged shall not contain constituents in excess of the following limits: (See Order No. 93-42, pp 4,5 for numerical limits).

C.2: The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally.

Monitoring Requirements

<u>Violations</u>	<u>Description</u>
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98	Failure to report or adequately describe violations. The correspondence file details failures to adequately report violations. For example a February 4, 2002 memorandum/letter from RWQCB staff member Cathy Goodwin identifies a failure to report exceedances of weekly BOD concentration limits and confusing reporting of flow limitation violations. A June 27, 2001 letter from Ms. Goodwin cites omission of visual monitoring results and often unclear, incomplete reports for this Facility as well as treatment plants for Graton and Forestville, for which the SCWA also has operational responsibility. (Order No. 93-42 E.8, E.10a)
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E.8: Duty to Provide Information

The permittee shall furnish the Board, State water Resource Control Board (SWRCB) or the Environmental Protection Agency (EPA), within a reasonable time, any information which the Board, SWRCB or EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit or to determine compliance with this Permit. The permittee shall also furnish to the Board upon request, copies of records required to be kept by this Permit. [40 CFR 122.41(h)]

E.10a: Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

Violations of the SCWA at the Occidental Facility are also documented in Cease and Desist Order No. 97-74 and Administrative Civil Liability Order No. 92-126.

C. Forestville County Sanitation District

Until the transfer of ownership and operational responsibility to the Forestville Water District, on July 1, 2004, the SCWA operated a wastewater collection and treatment facility serving the Forestville community ("Forestville Facility"). The Forestville Facility has provided secondary treatment for the average daily dry weather flow of up to 0.10 million gallons per day (mgd) and average wet weather flow of up to 0.25 mgd. The Permittees are modifying and upgrading the Forestville Facility to provide advanced treatment for up to 0.130 mgd dry weather flow and a peak wet weather flow of up to 0.58 mgd. The Forestville Facility discharges during the winter months to a tributary of Green Valley Creek at the permitted limit rate of 1% of the flow of Green Valley Creek. The Forestville Facility is regulated under NPDES Permit No.CA0023043 (WDR Order No. 95-54). Currently, a draft permit is under consideration for approval by the RWQCB.

The Forestville Facility's SMRs reveal ongoing effluent limit violations caused by wastewater treatment malfunctions. There is also a pattern of failures to perform required monitoring and reporting. Beneficial uses of the Green Valley Creek and its tributaries in the vicinity of the Forestville Facility are being effected in a prohibited manner by these violations. Said violations are evidenced and reported in monthly SMRs, or DMRs, the SCWA's own testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. Furthermore these violations are continuing.

From September 7, 1999 through September 7, 2004, this District and SCWA have continued to violate the requirements of the Forestville Facility's NPDES Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Forestville Facility's Permit for discharge limitations, effluent limitations and receiving water limitations. The violations, established in SMRs, raw data

and records of the RWQCB, include but are not limited to the following categories in the Permit:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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- | | |
|------|---|
| 8 | Excessive discharge. (Order No.95-54 A.6) |
| 5 | Spill of reclaimed water. (Order No. 95-54 A.7) |
| 20 | Irrigation runoff in excess of vegetative capacity. (Order 95-54 E.5) |
| 1825 | Collection system overflows, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in Complaint/Spill Forms, such as the Complaint submitted on 7/31/03, regarding an overflow from a manhole on Main Street in Forestville. Underground discharges are alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the Facility reported in the SMRs. (Order No. 95-54 A.4) |

A.6: During the period of October 1 through May 14, discharges of wastewater shall not exceed one percent of the flow of Green Valley Creek.

A.7 There shall be no discharge of waste to land which is not controlled by the permittee or the Sonoma County Water Agency/Graton Sanitation Zone.

A.4 The discharge of untreated waste from anywhere within the collection, treatment or disposal facility is prohibited.

E.5 Reclaimed water shall be applied in such a manner so as not to exceed vegetative capacity.

Effluent Limitations

<u>Violations</u>	<u>Description</u>
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- | | |
|---|--|
| 6 | Limit on BOD. (Order No. 95-54 B.1) |
| 7 | Limit on Chlorine. (Order No. 95-54 B.1) |
| 6 | Limit on NFR. (Order No. 95-54 B.1) |
| 6 | Limit on chlorine. (Order No. 95-54 B.1) |

- 5 Limit on Coliform. (Order No. 95-54 B.1)
10 Limit on Copper. (Order No. 95-54 B.2)

B.1 Wastes discharged shall not contain constituents in excess of the following: (See Permit, pp 7, 8 for numerical limits)

B.2 Representative sample of Discharge Serial No. 002 must not contain constituents in excess of the following limits: (See Permit p8 for numerical limits)

Receiving Water Limitations

Description

- 8 Difference between pH levels in Green Valley Creek upstream and downstream of discharge point exceeded permitted limit of ± 0.5 . (Order No. 95-54 C.2)
5 Difference in turbidity of Green Valley Creek upstream and downstream of discharge point exceeded the permitted limit of 20%. (Order No. 95-54 C.3)

C.2: The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally.

C.3: The discharge shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.

Monitoring Requirements

Violations Description

- 118 Failure to report or adequately describe violations. (Order No.95-54 E.11)

E.11: Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

D. Sea Ranch Central Wastewater Treatment Plant

The Sea Ranch Central Wastewater Treatment Plant and Disposal Facilities ("Sea Ranch Facility") are owned and operated by the SCWA. The Sea Ranch Facility is designed to provide secondary treatment for up to 27,000 gallons of wastewater per day, average dry weather flow. Treated wastewater is discharged to a 1.74 million gallon storage pond. Water from the pond is discharged to an adjacent irrigation field. Operation of the Sea Ranch Facility is regulated under Waste Discharge Requirements Order No. 96-11. The SCWA has no NPDES permit for discharging from the Sea Ranch Facility.

The Sea Ranch Facility's collection system has a history of inflow and infiltration problems during storm events, which has caused treated effluent to exceed storage capacity, resulting in discharges of effluent to surface waters in violation of the Clean Water Act's prohibition of discharging a pollutant from a point source to water of the United States without a NPDES permit, Clean Water Act § 301(a), 33 U.S.C. § 1311(a). In order to avoid storage pond overflows, unauthorized discharges to surface waters and excessive irrigation have occurred.

The history of such practices is documented in Cease and Desist Order 98-34, dated March 26, 1998. A communication on May 14, 2003 from Susan Warner, Executive Officer of the RWQCB to J. Bradley Clayton of The Sea Ranch Water Company, indicates that inadequate wastewater storage capacity is ongoing. Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by the Sea Ranch Facility are prohibited by law. Beneficial uses of the ocean and its tributaries in the vicinity of the Sea Ranch Facility are being affected in a prohibited manner by these violations. Pursuant to § 304 of the Clean Water Act, 33 U.S.C. § 1311, the EPA and the State have identified the Sea

Ranch Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

From September 7, 1999 through September 7, 2004, the SCWA has violated the Clean Water Act, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States at the Sea Ranch Facility without a NPDES permit. Said violations are evidenced and reported by Sea Ranch Facility staff in its SMRs or DMRs, its own testing data compiled in compliance with its WDRs or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. Furthermore these violations are continuing.

The violations, established in the SMRs, raw data and records of the RWQCB, include but are not limited to the following categories in the Permit:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
50	Spray irrigation runoff resulting in discharge to tributary of Pacific Ocean.
30	Storage pond overflows resulting in discharge to tributary of Pacific Ocean.
1825	Collection system overflows, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the United States. Surface overflows are evidenced in the SCWA's

West County Sewage Stoppage reports, such as those submitted for February 11, 2003, November 25, 2001 and July 14, 2002. Underground discharges are alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in the SMR's.

E. Gualala Community Services District and Sea Ranch Golf Links

The SCWA operates the Gualala Community Services District Treatment Plant ("Gualala Facility") which is designed to treat up to 0.291 mgd average dry weather flow, to an advanced level. Of this flow, 0.131 mgd will be septic tank effluent produced within the Gualala Service District and 0.160 mgd of secondary treated wastewater from Sonoma County Service Area #6 (Sea Ranch) North Treatment Plant. Sea Ranch Village proposes to reclaim all of the water produced by the Gualala Facility to be used primarily to augment irrigation of the Sea Ranch Golf Links. Treated wastewater is stored during the winter months in storage ponds adjacent to the Gualala Facility and a tributary of the Gualala River. An 'Agreement for Reclaimed Water Disposal on Golf Course' has been signed by representatives of the Gualala Service District, Sonoma County Service Area #6, and Sea Ranch Village, defining each entity's responsibility with regard to wastewater treatment and disposal.

The treatment and disposal of wastewater by the Gualala District and Sea Ranch Village is regulated by Water Reclamation Requirements Order No. 92-121, adopted on September 24, 1992. The SCWA has no NPDES permit for discharging to waters of the United States from the Gualala Facility.

The Gualala facility has a history of inflow and infiltration into its collection system, resulting in exceeding or threatening to exceed its storage pond capacity. These conditions have resulted in storage pond overflows and irrigation in excess of vegetative capacity in an attempt to avoid storage pond overflows.

From September 7, 1999 through September 7, 2004, the SCWA has violated the requirements of the Clean Water Act, the Basin Plan and the California Water Code. Said violations are evidenced and reported by Gualala Facility staff in its SMRs or DMRs, its own testing data compiled in compliance with its Water Reclamation Requirement Orders or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. By allowing prohibited discharges of wastewater to United States waters without a NPDES Permit, the SCWA is in violation of § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Furthermore these violations are continuing.

The violations, established in the SMRs, raw data and records of the RWQCB, include but are

not limited to the following categories:

Discharge	Prohibitions
<u>Violations</u>	<u>Description</u>

- | | |
|------|---|
| 50 | Irrigation at a rate exceeding vegetative demand causing runoff to waters of the United States |
| 1825 | Collection system overflows to waters of the United States, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the United States. Surface overflows are evidenced in the SCWA's West County Sewage Stoppage reports. Underground discharges are alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in the SMR's. |
| 30 | Storage pond overflows to waters of the United States |

F. Airport County Service Area No. 31

The SCWA operates the Airport Wastewater Reclamation Facility ("Airport Facility") which services Wikiup, Larkfield and the Airport Industrial Area. The SCWA has entered into an agreement with the Windsor Water District to permit the transfer of treated wastewater between the systems serving the Windsor District and the Airport Service Area. Treated effluent from the Airport Facility is transferred to Airport Storage Pond #1. The Airport Facility is located within the Mark West Creek drainage area. Mark West Creek is a tributary to the Russian River. Beneficial uses of the Russian River and its tributaries include municipal and domestic water supply, agricultural supply, industrial process supply, groundwater recharge, water contact and non contact recreation, fish and wildlife habitat.

The Airport Facility is regulated by Water Reclamation Requirements ("WRR") Order No. 90-76. The SCWA does not have a NPDES permit allowing it to discharge to waters of the United States from the Airport Facility.

The Airport Facility has a history of discharge violations, reclaimed water quality violations and monitoring requirements violations. In March and April of 2002, the Airport Sanitation Zone exceeded 85% of its available storage. Construction of an additional storage pond, Reservoir D, was undertaken in the winter season of 2000, with inadequate erosion controls, resulting in turbidity runoff to an adjacent

wetlands and into Windsor Creek, in violation of the Basin Plan. Said violations are documented in Administrative Civil Liability Complaint No. R1-2002-0062.

From September 7, 1999 through September 7, 2004, the Airport Facility has violated the requirements of the Clean Water Act, the Basin Plan and the California Water Code, as those requirements are referenced in the Airport Facility's WRR Order for discharge limitations and effluent limitations. Said violations are evidenced and reported by Airport Facility staff in SMRs, DMRs, its own testing data compiled in compliance with its WRRs or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. By allowing prohibited discharges of wastewater to waters of the United States without a NPDES Permit, the SCWA is in violation of § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Furthermore these violations are continuing.

The violations, established in the Airport Facility's SMRs, raw data and records of the RWQCB, include but are not limited to the following categories:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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- | | |
|-------------|--|
| 1825 | Collection system overflows, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the United States. Surface overflows are evidenced in the SCWA's West County Sewage Stoppage Reports, such as those submitted for April 6, 2002 and April 15, 2002. Underground discharges alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to this Facility reported in this Facility's SMRs |
| 30 | Discharge at a rate exceeding vegetative demand and soil moisture requirements, resulting in over watering and runoff to waters of the United States. |
| 20 | Storage pond overflows, resulting in runoff to waters of the United States. |

G. Sonoma Valley County Sanitation District

The Sonoma Valley County Sanitation District ("SVCSD") is under the operating authority of the SCWA. This municipal wastewater treatment plant ("Sonoma Facility") is located at 22675 Eighth Street East in the City of Sonoma, Sonoma County. The Sonoma Facility provides secondary treatment for domestic and light commercial wastewater collected from the City of Sonoma and nearby unincorporated

areas of Glen Ellen, Boyes Hot Springs, and Agua Caliente. The Sonoma Facility has an average dry weather flow design capacity of 3.0 million gallons per day (mgd) and often receives more than its maximum capacity of 8.0 mgd during the wet weather flow period. The SVCSD continuously discharges from the Sonoma Facility in wet seasons and intermittently discharges in dry season to waters of the State and the United States.

The SVCSD has a history of inadequate pollution prevention/source reduction and pretreatment programs, as exemplified by its failure to comply with the conditions and limitations of its NPDES Permit No. CA0037800. (1998 Permit - WDR Order No. 98-111, and 2002 Permit WDR Order No. R2-2002-0046). The Permits were issued by the RWQCB pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342, at the Sonoma Facility. The latter Permit, WDR Order R2-2002-0046, contains interim performance based limits on certain toxic pollutants, based on the Sonoma Facility's demonstrated infeasibility under State Implementation Policy Section 2.1, to meet water quality base effluent limits. Cease and Desist Order No. R2-2002-0044 set a compliance schedule for Zinc in the Sonoma Facility's discharge whereby interim limits are in effect between April 1, 2002 and March 31, 2005. By April 1, 2005 the Sonoma Facility must achieve compliance with the water quality base effluent limits of 52 ug/l monthly average and 79.4 ug/l daily maximum. While the Sonoma Facility is currently in compliance with the interim limits, current trends in its SMRs indicate that it will not achieve compliance with the final limit by April 1, 2005. (See SMR for March 2004- 76 ug/l monthly average, 87 ug/l daily max.)

The SVCSD has a collection system comprised of approximately 188 miles of gravity-flow pipeline, most of which is between 40 and 80 years old. According to the Wet Weather Overflow Prevention Study submitted by the SVCSD on January 25, 2002, 74 percent of the SVCSD's main trunk line is in "severe" condition (defined as having severe defects which contribute significantly to inflow and infiltration). The SVCSD has a history of significant overflows. Despite some recent repairs to the collection system, overflows continue to occur in significant numbers, primarily caused by inflow and infiltration, e.g. 6 incidents reported in SCWA East County Sewer Stoppage Report for December 2003.

It is also alleged that underground discharges from the SVCSD's leaking and damaged collection system are contributing to the nutrient and pathogen loading of Sonoma Creek and other local waterways. Raw sewage from the antiquated collection system is discharged directly into surface waters, including storm drains and gullies. Much more sewage is discharged to the collection system than reaches the Sonoma Facility. In other words the collection system leaks like a sieve; however, as most of the leaks are below ground they go undetected. Evidence to support the allegation of underground discharge of raw sewage exists in the SVCSD's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the Sonoma Facility reported in the SVCSD's SMRs. Additional evidence of underground discharges is discoverable through a video inspection of the collection system and testing of waterways adjacent to sewer lines for nutrients and pathogens indicative of sewage contamination.

Every day the SVCSD continues to transport untreated sewage through cracked, corroded and misaligned sewer lines, there are unauthorized discharges of raw sewage. The leaking sewer system poses a significant risk to both human health and the environment.

Despite the risk to human health and the environment from underground leakage, the preferred collection system improvement alternative chosen based on the Wet Weather Overflow Prevention Study is system up sizing only, as opposed to combined up sizing and rehabilitation. The need for some minimal ongoing rehabilitation is acknowledged, but the major funding is earmarked for enlarging critical segments of the system to avoid surface overflows. This approach guarantees additional underground leakage as larger volumes flow through the system while a significant portion remains damaged, leaking and unrepaired.

The SVCSD is a major discharger as defined by the EPA. The SVCSD is permitted to discharge to Schell Slough, Hudeman Slough and Ringstrom Bay, as well as to the wetland management units. Pursuant to § 301(a) of the Clean water Act, 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by the SVCSD of its Permits are prohibited by law. Beneficial uses of Sonoma Creek and its tributaries in the vicinity of the Sonoma Facility are being effected in a prohibited manner by these violations. Pursuant to CWA § 304, 33 U.S.C. § 1311, the EPA and the State have identified the Sonoma Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

From September 7, 1999 through September 7, 2004, the SVCSD has violated the requirements of the Sonoma Facility's NPDES Permits, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Sonoma Facility's permit for discharge limitations, effluent limitations, receiving water limitations. Said violations are evidenced and reported in its SMRs, DMRs, its own testing data compiled in compliance with its Permits or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession, and as evidenced by unpermitted discharges due to failures in the collection system. Furthermore these violations are continuing. The violations, established in SMRs, raw data and records of the RWQCB, include but are not limited to the following categories in the Permits:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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1825	Collection system overflows, including discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in the SCWA's East County Stoppage Reports, such as those submitted for December 2003, February 2004, and March 2004. Underground discharges are alleged to have been continuous throughout the five year period from September 7, 1999 to September 7, 2004.
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Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to this Facility reported in SMRs. (Order No. 98-11 A.2, Order No. R2-002-0046 A.3)

A.2: The bypass or overflow of untreated or partially treated wastewater to waters of the State, either at the treatment plant or from the collection system or pump stations tributary to the treatment plant, is prohibited except as allowed by Standard Provision A.12

A.3: The bypass or overflow of untreated or partially treated wastewater to waters of the State, either at the treatment plant or from the collection system or pump stations tributary to the treatment plant, is prohibited except as provided for bypasses under the conditions stated in 40 CFR 122.41(m)(4) in Standard Provision A.13.

Effluent Limitations

<u>Violations</u>	<u>Description</u>
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72	Limit on chlorine residual (Order No. 98-111 B.1(f) and Order No. R2-002-0046 B.1(e))
65	Limit on zinc. (WDR No. 98-111 B.7(a) and Order No. R2-002-0046 B.7a)
80	Limit on copper. (WDR No. 98-111 B.7a)
115	Limit on pH. (Order No. 98-111 B.2 and Order No. R2- 002-0046 B.2)
75	Limit on total coliform bacteria. (Order No.98-111 B.3 and Order No. R2-002-0046 B.4)

98-111 B.1: The term "effluent" in the following limitations means the fully treated wastewater effluent from the discharger's wastewater treatment facility, as discharged to the Schell Slough. The effluent discharged to the Schell Slough during the wet weather period shall not exceed the following limits: (See Order 98-111, pp 21,22 for numerical limits)

98-111B.3: Coliform Bacteria: The treated wastewater, at some point in the treatment process prior to discharge, shall meet the following limits of bacteriological quality: (See Order 98-111 p22 for numerical limits)

98-111 B.7:a Toxic Substances Effluent Limitations: The discharge of effluent containing constituents in excess of the following limitations is prohibited: (See Order 98-111 p23 for numerical limits)

R2-002-0046 B.1:

The effluent shall not exceed the following limits listed in Table 3.
(See Order R2-002-0046 p31 for numerical limits)

R2-002-0046 B.2:

Effluent Limitation for pH: (See Order R2-002-0046 p31 for numerical limits)

R2-002-0046 B.4:

Total Coliform Bacteria: The treated wastewater, at some point in the treatment process prior to discharge, shall meet the following limits of bacteriological quality: (See Order R2-002-0046 p31 for numerical limits)

Reclamation Project Limitations

<u>Violations</u>	<u>Description</u>
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30	Irrigation runoff, exceeding vegetative capacity. (Order No. 98-111 D.1, D.2, Order No. CA0037800 D.1,D.2,D.3)
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Order No. 98-111 D.1:

The beneficial uses of Hudeman Slough shall not be degraded as a result of the wetlands enhancement project.

Order No. 98-111 D.2:

The salt marsh habitat located in the area designated as Management Unit 2 in the report titled Hudeman Slough Wetland Enhancement Plan shall not be degraded as a result of the wetlands enhancement project.

Order No. CA0037800 D.1:

The beneficial uses of Hudeman Slough shall not be degraded as a result of the wetlands enhancement project.

Order No. CA0037800 D.2:

The salt marsh habitat located in the area designated as Management Unit 2 in the report titled Hudeman Slough Wetland Enhancement Plan shall not be degraded as a result of the wetlands enhancement project.

Monitoring Requirements

<u>Violations</u>	<u>Description</u>
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110	Failure to report or adequately describe violations. (Order No. 98-111 F.19, Order
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CA0037800 F.16)

Order No. 98-111 F.19:

The Discharger shall comply with the Self-Monitoring Program for this Order, as adopted by the Board and as may be amended by the Executive Officer.

Order CA0037800 F.16:

The Discharger shall comply with the SMP for this Order as adopted by the Board. The SMPs may be amended by the Executive officer pursuant to US EPA regulation 40 CFR 122.62, 122.63, and 124.5.

Violations by the SCWA of the Sonoma Facility's NPDES Permit have also been documented in Cease and Desist Order No. R2-2002-0044 and Administrative Civil liability Order No. 01-020A.

H. SCWA Flood Control Program

The SCWA is duly authorized to construct, operate and maintain facilities controlling conservation, diversion, storage and disposition of storm, flood and other surface waters in Sonoma and Mendocino Counties. Flood control operations are regulated under WDR Order No. 81-73, adopted by the RWQCB, North Coast Region, on August 27, 1981. The SCWA conducts weed control on agency-owned service roads adjacent to flood control channels. From March 29, 2004 to April 6, 2004, weed control activities were conducted by Clark Pest Control, under contract with the SCWA, utilizing the application of the herbicide Rodeo. Immediately following the herbicide application, the SCWA began receiving calls regarding the extent of the application. Observations by SCWA staff disclosed that the contractor had over sprayed the service roads, down into the stream banks, in some instances within two or three feet of the water surface. Damage to riparian vegetation was readily apparent. The over spraying occurred along approximately 80 miles of local streams in Sonoma County. Some of the sprayed roadways were asphalt or compacted gravel, where no vegetation occurs and therefore no spraying is necessary.

On July 1, 2004, the RWQCB issued a Notice of Violation of Waste Discharge Requirements regarding the herbicide over spraying. The overspraying likely resulted in the contamination of surface waters. Under Notification, Monitoring and Reporting Program No. 81-73, Notification Provision B., the SCWA was obligated to submit a notice in writing to the RWQCB, 30 days in advance of any activity involving pesticide or herbicide use, which notice was to include, in addition to other information, proposed locations of sampling stations for water quality monitoring. The SCWA failed to provide said notification.

Under Notification, Monitoring and Reporting Program No. 81-73, Monitoring Provision B., the SCWA was required to implement a monitoring program to detect possible discharge of herbicide to

surface waters as a result of contamination by drift, over spray or stormwater runoff. The monitoring program was to include:

- 1) Establishment of monitoring stations upstream and downstream of treatment units.
- 2) Grab water samples obtained at each monitoring station at a time midway through the calculated flow time from the point of the discharge most distant in the application area.
- 3) Grab water samples obtained at each monitoring station should a rainfall runoff event occur within one month after application.

The SCWA failed to implement said program and also failed to notify the RWQCB as soon as they were aware of the over spray, pursuant to Order 81-73, Section B-Provision 8 requiring immediate notification upon knowledge of non-compliance due to accidents caused by human error or negligence. Because of the SCWA's failure to implement the monitoring program and to timely notify the RWQCB, no reliable data exists to determine the extent of water quality impacts. Under the Clean Water Act, all applications of herbicide to waters of the United States must be regulated under a NPDES Permit.

From March 29, 2004 to April 6, 2004 the SCWA has violated the requirements of the Clean Water Act and the Basin Plan. By allowing prohibited discharges to waters of the United States without a NPDES Permit, the SCWA is in violation of § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Furthermore, by virtue of the ongoing contamination of local streams, these violations are continuing.

The violations, established in the SCWA's records and the above referenced Notice of Violation, include the following:

Prohibited Discharge

<u>Violations</u>	<u>Description</u>
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100	Discharge of the herbicide Rodeo, a recognized toxic pollutant, into waters of the United States without a NPDES Permit.
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The violations enumerated above and in the aforementioned documents exemplify a pattern and practice of a failure to commit adequate resources to protect public health and the environment. Furthermore these violations are continuing.

III. PENALTIES

Pursuant to § 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$27,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action.

In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Clean Water Act pursuant to § 505(a) and § 505(d), 33 U.S.C. § 1365(a) & (d), and such other relief as is permitted by law. Lastly, § 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

IV. CONTACT INFORMATION

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465, telephone number 707-874-2579.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esq.
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Post Office Box 5469
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V. CONCLUSION

The violations of the SCWA as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the effected communities. The members of River Watch use the effected watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the SCWA's violations of the Clean Water Act.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under

Section 505(a) of the Clean Water Act against the SCWA and the County of Sonoma for the aforementioned violations.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE. However, if the SCWA or County wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the

next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not do intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,

Jack Silver

cc:

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